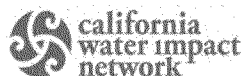




WINNEMEM
WINTU TRIBE



NORTH
COAST
RIVERS
ALLIANCE



February 18, 2010

Ms. Karen Hall,
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Comments Re Two Year Interim Renewal Central Valley Project Water Service Contracts: Westlands Water District [WWD] Contracts 1406-200-8237A-IR13; 14-06-200-8238A-IR13; WWD DD1-Broadview 14-06-200-8092-IR12; WWD DD1 Centinella 707-20-W0055-IR12-B; WWD1 Widren 1406-200-8018-IR12-B; WWD DD2 Mercy Springs 1406-200-3365A-IR12-C.

Dear Ms Hall:

The organizations whose names appear on this letterhead submit the following comments on the Westlands Water District Interim Renewal Central Valley Project Water Service Contracts referenced above.

Much has changed since the last interim supplemental water contract renewals for Westlands Water District. In fact much has changed over the years of "interim contract" renewals. The interim contracts, however, have not changed to reflect reality:

1. The interim contracts do not reflect the amount of available water resources. Exaggerated contract water quantities do not accurately reflect the delivery capability of the CVP, especially after legal regulatory actions under the Clean Water Act, the CVPIA, Endangered Species Act, Tribal Trust, Area of Origin and Public Trust Doctrine needs are considered. If Westlands gets its way under these proposed contracts the approximately 350 common ownerships¹ will control more water than the households of Los Angeles, San Francisco, San Diego, Riverside and San Bernardino, combined, use in a year. This over- commitment of scarce water resources will become even more acute in the future, as senior water rights holders upstream develop their water supplies and the federal government fulfills its obligations to meet reserved fishing rights of Native American Tribes on the Trinity River– the Hoopa Valley and the Yurok Tribes.
2. The Water Needs Analysis is at least a decade old and does not reflect irrigation changes or land base changes that have occurred in WWD. In 2002, taxpayers paid a few growers in the Westlands Water District some \$100 million to retire nearly 40,000 acres of drainage-impaired land because applying imported water polluted the groundwater and surrounding land with salt, boron, and toxic selenium. The San Luis Drainage Feature Re-evaluation FEIS (2006) identified 44,106 acres of land that had been permanently retired from irrigation in Westlands. This acreage is comprised of Sumner Peck, Britz Settlements with the Federal Government and CVPIA land retirement demonstration program. An additional 66,000 has also been retired by Westlands due to pollution concerns.² Ultimately 194,000 acres will be retired under the San Luis Drainage Feature Re-evaluation Record of Decision [2006]. Some of these lands, nearly 40,000 acres contain an irrigation covenant forbidding the application of CVP water. The water needs analysis assumes all 600,000 acres³ of WWD are still irrigated and receiving full contract quantities and yet approximately 1/3 of the district is restricted from irrigation or soon will be.
3. The contract promises Westlands up to 1.15 million acre-feet (plus water from water assignments from Broadview, Mercy Springs, Widren and Centinella WD's) and yet the crops have changed dramatically. According to WWD crop reports from 2005 to 2008, there has been a 68% increase almond acreage. Between 2007 and 2008 alone, 4,042 acres of almonds were planted. In fact in 2008 WWD had excess supply and exported through the State Water Project Canal south to Kern County.⁴ The original contract for Westlands was only 900,000 AF⁵. This amount is closer to the average actual delivery of 701,500 AF over the last decade. The new contract renewal calls for about a 50% increase in deliveries over the average for the last decade while the area of land in the district eligible to receive CVP supply has declined.
4. Changes in Westlands' supply and application since the last interim contract are not included. Specifically missing are water transfers and CVP Contract Assignments into, and groundwater exports out of, WWD. For example contract water from Broadview, Widren, Centinella and Mercy Springs Districts, all with land not suitable for farming due to pollution, assigned their water to WWD. The interim contract maps do not accurately reflect this increase in water supplies and boundary changes. Further, the contracts do not reflect the potential cost increase from the application of this water to upslope selenium lands. The location and impacts of these new imported CVP contract supplies is missing from the proposed interim contracts.

5. The increased pollution costs from transfers are not disclosed. For example, Westlands is proposing to pay for the development of new groundwater pumps for the San Joaquin River Exchange Contractors Water Authority in exchange for 20,000 acre feet a year of surface water for 25 years. As a result of the water transfer project Fish and Wildlife Service has identified increased pollution costs and ground water degradation from selenium and mercury contamination to refuge water, groundwater and surface water supplies in the Delta Mendota Canal.⁶ The result of this transfer may be to export pollution costs from Westlands to other water districts or to drinking supply users, the latter a direct public health risk.
6. Legally required accountability to taxpayers is given short shrift. Westlands has also periodically exported ground water out of the district and into the California Aqueduct. It is unclear whether Westlands harms the public by selling tainted groundwater at exorbitant prices and buying cheap, clean replacement surface water. The interim contracts do not reflect how this buying, selling and exchange of ground and surface water ensures taxpayers are reimbursed for their capital investments in the delivery systems and power as required by law. Typically once water is transferred out of the district and stored underground it is re-characterized as private property and not considered part of the CVP or subject to federal contract rules. The interim contracts need to protect the taxpayer investment before these transfers take place. Aside from Westlands' possible water manipulation, the government's failure to account for taxpayer spending would be especially egregious.
7. Importing water and irrigating selenium lands in Westland Water District has long been identified as a major source of selenium and contaminants migrating to downslope agricultural lands and, ultimately, to the San Joaquin River and Delta⁷. Firebaugh Canal Water District and Central California Irrigation District currently contend in a federal lawsuit that the application of surface water to Westlands Water District lands creates the downslope migration of polluted drainage water into their districts where it accumulates and flows in the Firebaugh and CCID drains, and from there to the San Joaquin River and its tributaries. They have brought suit contending Westlands WD is rendering their lands unsuitable for irrigation and causing them increased regulatory costs because of contaminated ground and surface water⁸. The water renewal contracts currently being negotiated with WWD provide for increased water deliveries to selenium soils despite the fact that much of the land is no longer suitable for farming and additional land will become similarly useless if irrigation continues.

Recovering the cost to the government and taxpayer from the pollution caused by this irrigation of selenium lands is also not considered in the contract renewals.

8. The Central Valley Project Improvement Act [CVPIA] requires, in section 3404, subdivision (c), that all renewal contracts, including these interim contracts, must fully incorporate all the requirements of federal reclamation law applicable to the CVP, including the purposes and provisions of the CVPIA. These contracts do not meet these basic requirements. These are not permanent entitlements and the right to renew is subject to review at the Secretary's discretion.

As a result of years of interim renewals the Congressional goals of full cost pricing and tiered pricing have been, in effect, disregarded and, therefore, undermined.

Bearing in mind, again, liabilities to the taxpayer, the contract renewals do not meet the goal of repaying taxpayer investment in the project. According to a 2007 GAO study as of September 30, 2005, the combined total CVP capital construction costs remaining to be repaid by San Luis Unit irrigation water districts under water service contracts and repayment contracts amounted to about \$497 million.⁹ Further adding to this debt to the taxpayers, the interim contracts do not reflect the huge pollution and drainage costs from applying large amounts of water to these lands, resulting in accumulating toxic concentrations of selenium, salts, and boron. The BOR Record of Decision for San Luis Drainage Feature Re-evaluation (2006) estimates drainage service cost to the San Luis Unit would be \$2.7 billion and approximately \$11 million per year in perpetuity to operate-if the untested treatment systems work. The full construction, treatment and disposal costs would be more than \$4.251 billion¹⁰

The interim contract charges for water delivered do not reflect the "full cost" of the water as required¹¹. In 2005 dollars the full capital, maintenance and operation costs would be \$55.20; Add the full cost of power and the rate goes to \$150 an acre foot. The new interim contracts do not disclose the water rates. In 2005, the Environmental Working Group estimated 15 corporate irrigation operations in Westlands received water subsidies worth at least \$1 million per farm in 2002 dollars.¹² There is scant recognition of obligations to the taxpayer in the interim contracts, showing a business-as-usual process in the midst of government's recognition of broad-based taxpayer distress.

In summary the contracts and their supporting environmental documentation have significant legal deficiencies. Specifically the proposed contracts and their supporting Environmental Assessments and other environmental documents violate the Administrative Procedure Act (APA), the Central Valley Project Improvement Act (CVPIA), the Reclamation Reform Act (RRA), the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA) and the California Environmental Quality Act (CEQA). We urge the Bureau to withdraw the proposed renewal contracts and reinitiate negotiations after adequate environmental review and consultation have been completed.

Respectfully submitted,



Jim Metropulos
Senior Advocate
Sierra Club California



Steven L. Evans
Conservation Director
Friends of the River



Barbara Barrigan-Parrilla
President,

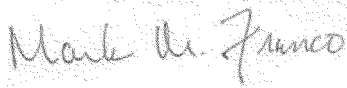
Warren V. Truitt
SARA
Save The American River Association, Inc.



Carolee Krieger
Board President and Executive Director
California Water Impact Network



Bill Jennings
Chairman Executive Director
California Sportfishing Protection Alliance



Mark Franco
Headman
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Charlotte Hodde
Water Program Manager
Planning and Conservation League



Conner Everts
Executive Director
Southern California Watershed Alliance

Frank Egger, President
North Coast Rivers Alliance

Bruce Tokar
Co-Founder
Salmon Water Now

ENDNOTES

¹ Nicholas Brozovic et. al. "Trading Activity In An Informal Agricultural Water Market: An Example From California," Department Of Agricultural and Resource Economics University of California 2001. Pg 1.

² See attached Westlands Land Retirement Map. See: Agreement Among The United States, Westlands Water District, And The Peck Plaintiffs For Settlement Of The Sumner Peck Lawsuit Dated: December 11, 2002

³ In addition, the map depicting the contract service area boundary for Westlands (Exhibit A of the Contract) has not been updated to reflect the retired lands no longer being eligible to receive CVP water. See map at:

http://www.usbr.gov/mp/cvpia/3404c/lt_contracts/2006_foc/index.html and in the DEA for 2010 Westlands Interim Contract Renewal at: http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=4817.

⁴ Jul 2, 2008, "DWR announces up to 50,000 acre-feet of groundwater will be pumped from wells within Westlands Water District into the California Aqueduct for transfer to Semitropic WD."
www.acwa.com/enNeswletter/index.asp?issue+7/2/2008

⁵ Ibid. Nicholas Brozovic et. al. Department Of Agricultural and Resource Economics University of California 2001. pg 2.

⁶ See USBOR Draft EA/IS for 25-Year Groundwater Pumping-Water Transfer Project for the San Joaquin River Exchange Contractors Water Authority. August 27, 2007 USFWS Comments—proposed action would degrade groundwater, increase selenium concentrations in DMC sumps, lessened water quality in the Main Canal and add selenium and mercury loads into refuges and pump mercury and selenium into the Delta Mendota Canal upstream of the Mendota Pool where Mercury levels in fish are already at unsafe levels and the San Joaquin River is listed on the 2006 Clean Water Act Section 303 [d] list. Pp 1-20

⁷ The U.S. Geological Survey, in cooperation with the SJVDP and as part of the Regional Aquifer System Analysis Program completed a report on the sources, distribution, and mobility of selenium in the San Joaquin Valley, California (Gilliom and others, 1989). This report noted the following with respect to groundwater pumping in the drainage impacted area: *"The large quantity of high-selenium ground water (50 to 1000 pg/L) in the general range of 20 to 150, feet below the water table makes it desirable to use management practices that leave this water where it is, rather than bring it to the land surface or allow it to move into parts of the aquifer that may be used for water supply. Water-table control strategies based on increasing groundwater discharge need to be carefully evaluated with respect to their potential to affect the movement of water with high selenium concentrations movement of water with high selenium concentrations"*

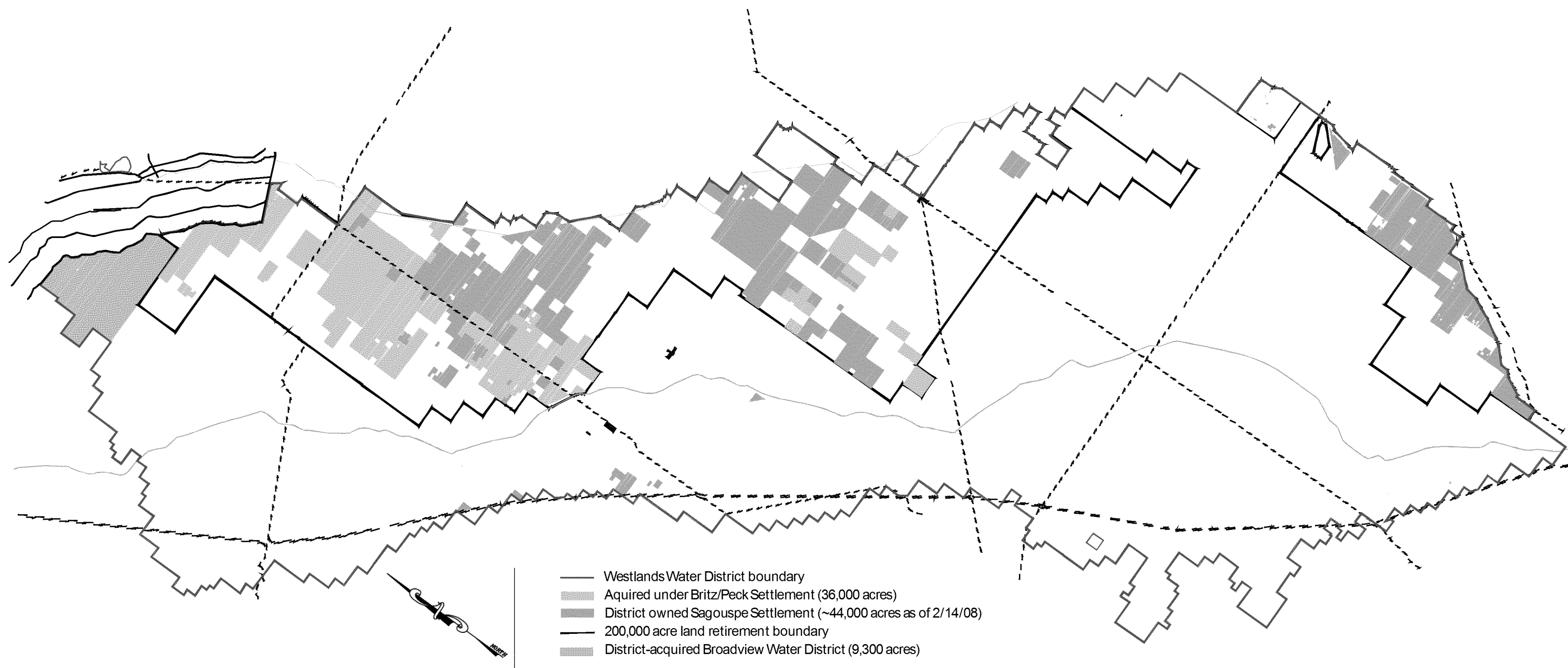
⁸ Firebaugh Canal Water District and Central California Irrigation District v U.S., Westlands Water District, Panoche Water District, Panoche Drainage District, Broadview Water District and San Luis Water District. Fifth Amended Complaint for Declaratory and Injunctive Relief and Injunctive Relief for Damages. pp 5.

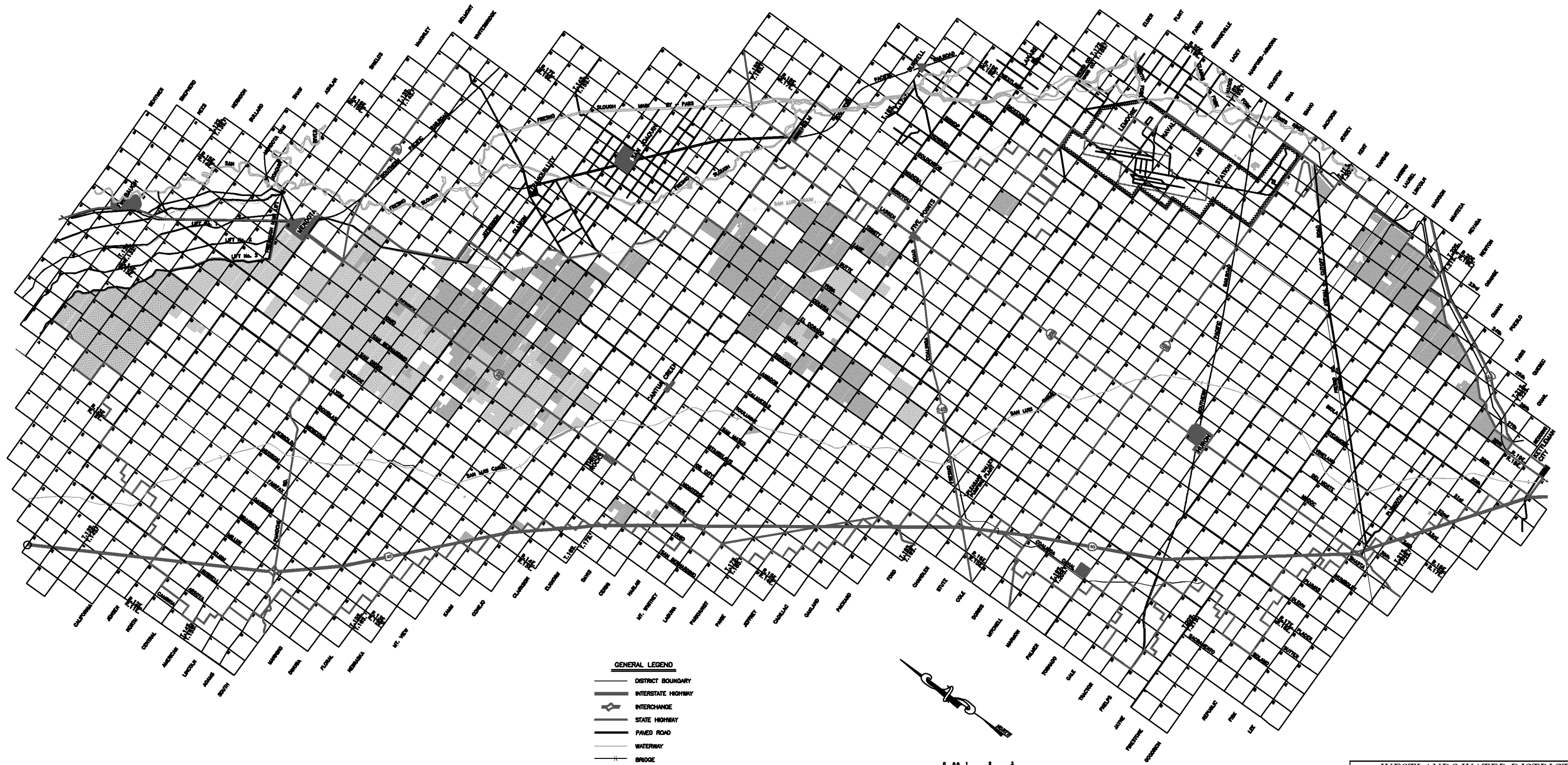
⁹ Bureau of Reclamation: Reimbursement of California's Central Valley Project Capital Construction Costs by San Luis Unit Irrigation Water Districts GAO-08-307R December 18, 2007 Full Report (PDF, 23 pages)

¹⁰ See the San Luis Drainage Feature Re-evaluation Record of Decision [2006] Bureau of Reclamation pg. 105.
http://www.usbr.gov/mp/sccaosld/docs/sldfr_report/slfr_3-08_v02.pdf

¹¹ See Reclamation Reform Act of 1982, Public Law 97-293, 96 Stat. 1263.

¹² Environmental Working Group "Soaking Uncle Sam." Why Westlands Water District Contract is All Wet." September 14, 2005. Farm operations receiving between \$2 M to \$1.7 M in subsidies: Woolf Enterprises; Dresick Farms Inc; Vaquero Farms; S&S Ranch; Harris Farms; Burford Ranch; Murrieta Westland Trust. EWG found that 37 percent of the farms in Westlands double dipped getting both water, power and crop subsidies.





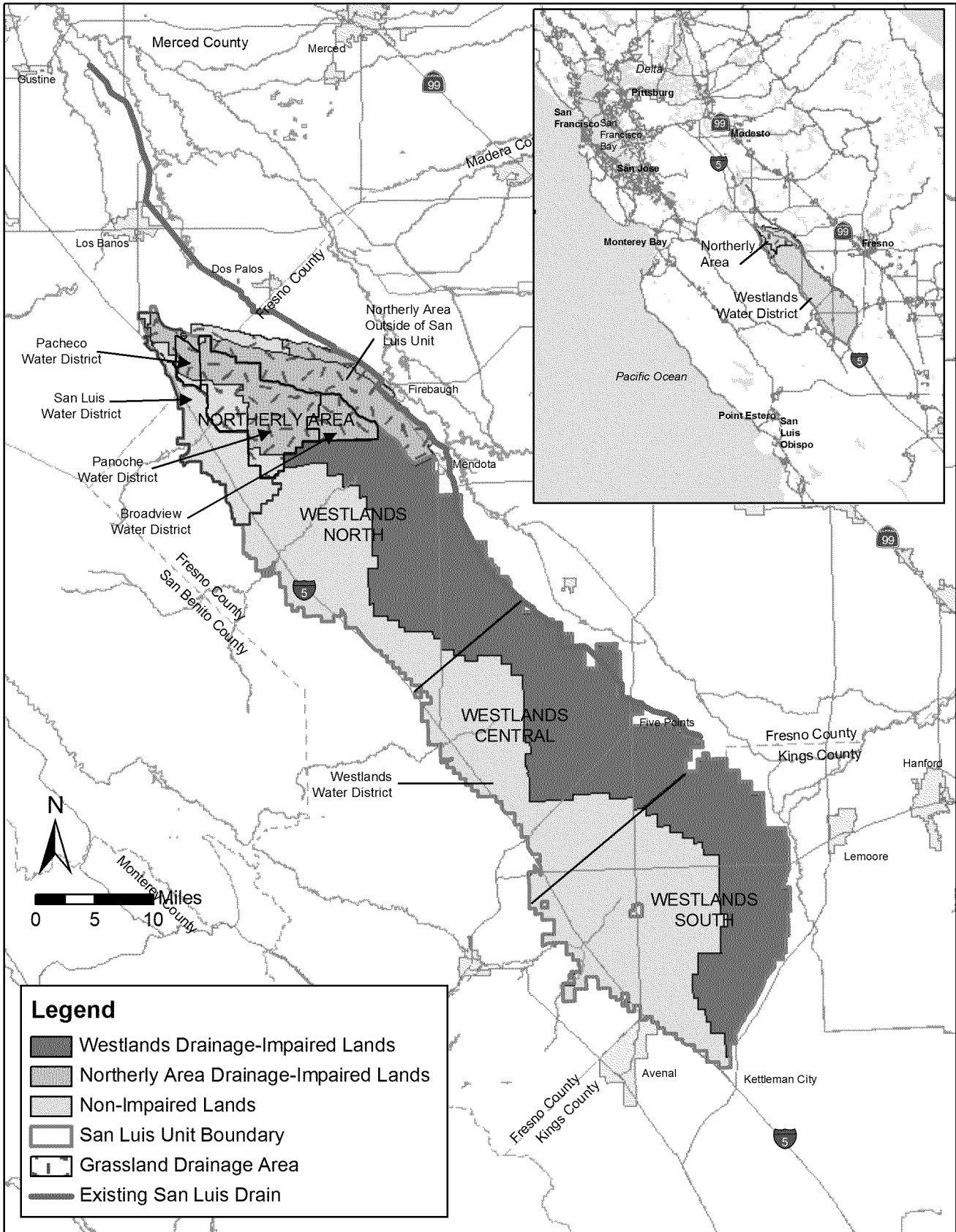
- GENERAL LEGEND**
- DISTRICT BOUNDARY
 - INTERSTATE HIGHWAY
 - INTERCHANGE
 - STATE HIGHWAY
 - PAVED ROAD
 - WATERWAY
 - BRIDGE
 - CHECK
 - NOT IN DISTRICT
 - ▨ DISTRICT ACQUIRED UNDER BRITZ/PECK SETTLEMENT - 36,000 ACRES
 - ▩ DISTRICT OWNED SAGOLISPE SETTLEMENT - 44,000 ACRES AS OF 2/14/08
 - 200K LAND RETIREMENT BOUNDARY
 - ▨ DISTRICT ACQUIRED BROADVIEW WATER DISTRICT - 9,300 ACRES

0 0.5 1 2 3
SCALE IN MILES

DWG:\ARCHIVED\2005-W-0012.DWG

7	2/14/08	JLR		
NUMBER	DATE	DRAWN	CHECKED	APPROVED
REVISION				

WESTLANDS WATER DISTRICT 3130 N. FRESNO ST. FRESNO, CALIFORNIA 93703 558.224.1523 Fax 558.241.6277	
LOCATION MAP	
PECK AND DISTRICT ACQUIRED LANDS	
DRAWN J. RANGEL	APPROVED
CHECKED	
DATE 3/10/08	DRAWING No 2005-W-0012A



San Luis Drainage Feature Re-evaluation
17324004

Drainage Study Area

Figure
ES-2